

ORDINANCE NO. 714

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, DECLARING A PUBLIC HEALTH, WELFARE AND SAFETY EMERGENCY NECESSITATING AN IMMEDIATE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR USE PERMITS, BUILDING PERMITS AND LICENSES FOR ADULT ENTERTAINMENT USES AND BUSINESSES TO BE EFFECTIVE FOR A PERIOD OF ONE YEAR, AND SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM.

WHEREAS, the state and federal constitutions allow for regulation of adult entertainment businesses in a manner which ensures protection of city businesses and neighborhoods from the secondary land use impacts of adult entertainment businesses; and

WHEREAS, there is evidence from the experiences of other cities that adult entertainment businesses may constitute a threat to the public health, safety and welfare in residential and commercial areas when left unregulated; and

WHEREAS, because the City presently has no regulations in place to specifically address the secondary land use effects of adult entertainment businesses, such a business could establish vested rights to locate in areas of the City which are contrary or inconsistent with the existing zoning; and

WHEREAS, the City of Gig Harbor will be undertaking a study of adult entertainment zoning and related issues for the purpose of determining the manner in which the City may regulate adult entertainment businesses to ameliorate their secondary land use impacts; and

WHEREAS, there is an urgent need, pending the completion of a study and the adoption of zoning and licensing requirements for adult entertainment businesses and uses, to preserve the status quo; NOW, THEREFORE,

BE IT ORDAINED by the City Council of the City of Gig Harbor, Washington as follows:

Section 1 - Definitions. For the purpose of this ordinance, the following definitions shall apply:

A. "Adult entertainment business" or "adult entertainment use" means:

1. A nightclub, bar, restaurant, theater, concert hall, auditorium, or similar commercial establishment that regularly features live performances by semi-nude persons.
2. An adult cabaret, which is a commercial establishment that presents go-go dancers, strippers, male or female impersonators or similar entertainers and that excludes any persons by virtue of age from all or any portion of the premises.
3. An adult drive-in theater, which is a drive-in theater where at least twenty-five percent of the use is for the presentation, for commercial purposes, of motion picture films, video cassettes, cable television, or any other like visual media, distinguished or characterized by a predominant emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.
4. An adult motion picture theater, which is an enclosed building where at least twenty-five percent of the use is for the presentation, for commercial purposes, of motion picture films, video cassettes, cable television, or any other like visual media, distinguished or characterized by a predominant emphasis on

matters depicting, describing, or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein.

5. An adult bookstore, which is a retail establishment in which:
 - (a) fifty percent or more of the stock in trade consists of books, magazines, posters, pictures, periodicals or other printed material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas; or
 - (b) Any person is excluded by virtue of age from all or part of the premises generally held open to the public where books, magazines, posters, pictures or other printed material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas are displayed or sold.
6. An adult retail store, which is a retail establishment in which:
 - (a) Fifty percent or more of the stock in trade consists of items, products, or equipment distinguished or characterized by a predominant emphasis on or simulation of specified sexual activities or specified anatomical areas; or

- (b) Any person is excluded by virtue of age from all or part of the premises generally held open to the public where products or equipment distinguished or characterized by a predominant emphasis on or simulation of specified sexual activities or specified anatomical areas are displayed or sold.
- 7. An adult video store, which is a retail establishment in which:
 - (a) Fifty percent or more of the stock in trade consists of prerecorded video tapes, discs, or similar material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas; or
 - (b) Any person is excluded by virtue of age from all or part of the premises generally held open to the public where prerecorded video tapes, discs, or similar material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas are displayed or sold.
- 8. "Panoram," "preview," "picture arcade" and "peep show" mean any type of device which, for payment of a fee, membership fee, or other charge, is used to exhibit, project, illuminate or display a photographed, videotaped or magnetically reproduced image, picture, view, live entertainment, or other graphic display distinguished or characterized by a predominant emphasis on

matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

B. "Semi-nude" means a state of dress that, with respect to a person's torso, opaquely covers only the buttocks, anus, genitals, and areola of the breasts, as well as portions of the body covered by supporting straps or devices.

C. "Specified anatomical areas" mean:

1. less than completely or opaquely covered: (i) human genitals, pubic region; or (ii) buttock; or (iii) female breast below a point immediately above the top of the areola.
2. human male genitals in a discernibly turgid state, even if completely or opaquely covered.

D. "Specified sexual activities" means:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, fellatio, cunnilingus, sexual intercourse, or sodomy; and
3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

E. "Stock in trade" means the greater of:

1. the retail dollar value of all prerecorded video tapes, discs, books, magazines or similar material readily available for purchase, rental, viewing, or use by patrons of the establishment, excluding material located in any storeroom or other portion of the premises not regularly open to patrons; or
2. the total number of titles of all prerecorded video tapes, discs, books, magazines or similar material readily available for purchase, rental, viewing or use by patrons of the establishment excluding material located in any storeroom or other portion of the premises not regularly open to patrons.

Section 2 - Purpose. The City Council acknowledges that other cities have found that adult entertainment businesses have been associated with prostitution, disruptive conduct, criminal activity and other secondary land use impacts which threaten the quality of life in commercial and residential neighborhoods, and generally may constitute a threat to the public health, safety and welfare.

Section 3 - Moratorium Imposed. The City Council hereby imposes a moratorium on the establishment, location or licensing of adult entertainment uses or adult entertainment businesses in the City, for a period of one year beginning on the date of the adoption of this ordinance. During this period, the Planning Commission is directed to develop a work plan to study the issue, hold public hearings as needed, determine if there are secondary land use impacts related to adult entertainment uses or adult entertainment businesses, determine the nature of these impacts on the City, and to develop recommendations for future action to address these impacts, which action may include proposed regulations for adult entertainment uses or adult entertainment businesses. The Planning Commission shall return its work plan to the City Council at least two weeks prior to the date of the public hearing set in Section 5 herein. In addition, the Planning Commission shall return its final recommendations to the City

Council within 232 days of the effective date of this ordinance.

Section 4 - Effective Period. For a period of one year from the effective date of this ordinance, or until new land use and/or business licensing regulations governing the location and operation of adult entertainment uses and businesses take effect, whichever is sooner, no required City business license, use permit or building permit, which is applied for after the effective date of this ordinance, shall be accepted or issued for any adult entertainment business or adult entertainment use as defined herein.

Section 5 - Public Hearing on Moratorium. Pursuant to RCW 36.70A.390, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or on April 8, 1996. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium, and either justify its continued imposition or cancel the moratorium.

Section 6 - Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 7 - Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this ordinance take effect immediately upon passage by a unanimous vote of the members of the City Council, and that the same not be subject to referendum.

PASSED by the Council of the City of Gig Harbor, this 12th day of February, 1996.

APPROVED:

Gretchen A. Wilbert, Mayor

ATTEST:

MARK E. HOPPEN

City Administrator/Clerk

Filed with City Clerk: 2/8/96

Passed by City Council: 2/12/96

Date Published: 2/21/96

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